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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

PANAMA

[28 January 1990]

I. GENERAL INFORMATION

1. The Republic of Panama is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by Act 5 of 16 June 1987, with a reservation inasmuch as article 2 of the Act contains a declaration to the effect that the State of Panama does not consider itself bound by the provisions of article 30, paragraph 1, of the Convention. The Republic of Panama is also a party to other international instruments for the protection of human rights: the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and its optional protocol, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Elimination of All Forms of Discrimination Against Women, and the American Convention on Human rights; and lastly, on 9 May 1990, the Republic of Panama recognized the competence of the Inter-American Court of Human Rights.

2. The National Constitution of the Republic of Panama has established measures of both a constitutional and a legal nature to ban torture in the juridical sphere. In pursuance of the provisions of article 2 of the above-mentioned Convention, the Republic of Panama has adopted measures contained in Book 3, article 2120 of the Judicial Code, which states as follows:

> "Article 2120:
>
> The use of promises, duress or threats to induce the accused to make a statement is prohibited, as also is any deceitful or subjective question. Any official who infringes this rule shall incur the appropriate disciplinary penalty, without prejudice to any criminal penalty to which he may be liable."

3. Thus, article 28 of the Political Constitution provides as follows:

> "Article 28:
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> The prison system is based on principles of security, rehabilitation and social protection. The application of measures injurious to the physical, mental or moral integrity of prisoners is prohibited." */

4. The practice of torture is considered by the Republic of Panama as a violation of human rights and is characterized as an offence against personal freedom by the Penal Code, which states as follows:

> "Article 160:
>
> Any public servant who subjects a detainee to undue harshness or constraint shall be punished by imprisonment for between 6 and 20 months. If the act consists in torture, degrading punishment, harassment or arbitrary measures the penalty shall be from 2 to 5 years' imprisonment."

5. It is the responsibility of the Ministry of Justice to institute the preliminary proceedings and of the Criminal Circuit Courts, the Higher Circuit Courts and the Criminal Division of the Supreme Court to judge such offences.

6. Protection against torture is provided for through various legal instruments, including the Criminal Code, the Procedural Code, and the Constitution of the Republic of Panama.

II. INFORMATION CONCERNING EACH OF THE ARTICLES 2 TO 16 OF THE CONVENTION

7. Article 4 of the National Constitution states that the Republic of Panama respects the rules of international law. As a natural and logical consequence of this, and without its needing to be expressly stated, the Convention is incorporated into the domestic legislation of the Republic of Panama, the latter becomes the law of the Republic and the instrument must be strictly complied with subject to the reservations made by Panama to the Convention.

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*/ Our underlining, to highlight the relevant provision.

8. With regard to article 3 of the Convention, article 24 of the Political Constitution of the Republic of Panama stipulates that "the State may not extradite its nationals, nor may it extradite aliens for political offences." As tacitly provided in the National Constitution, the article concerned is incorporated into our domestic law and becomes an enforceable rule.

9. The Penal Code of the Republic of Panama designates cruel acts as infringements. Consequently, it prohibits violations of physical integrity and makes torture a criminal offence, as specifically laid down in the above-cited article 160 of the Penal Code.

10. Article 10 provides that the Penal Law of Panama shall apply to whosoever commits acts punishable under international treaties. Thus the provision contained in article 5 of the Convention is covered by article 10 of the Penal Code, which states:

"Article 10:

Irrespective of the provisions in force at the place where the punishable act was committed and of the nationality of the accused, the penal law of Panama shall be applied to whosoever commits punishable acts designated in international treaties ratified by the Republic of Panama.

For the offences referred to in the foregoing paragraph to be subject to prosecution and punishable in Panama it is necessary that the accused should be present in the territory of the Republic."

11. Concerning extradition, dealt with in article 6 of the Convention, the matter is regulated in the Republic of Panama by what is laid down in the Judicial Code, namely:

"Article 2500:

Extradition shall be regulated by what is laid down on the subject by any public treaties to which the Republic of Panama is a party and, failing such, to the provisions laid down in sections 1 and 2 below of this chapter."

"Article 2501:

Extradition of persons sought by Panamanian authorities shall be negotiated through the Ministry of Foreign Affairs, at the request of the judge who has instituted criminal proceedings or pronounced sentence, or of the competent official who was in charge of the preliminary trial proceedings for the offence concerned."

"Article 2502:

The request referred to in the foregoing article must be accompanied by the following:

1. Should a penalty have been inflicted upon the accused, a copy of the sentence executed and of the items of evidence on which the sentence is based if they are not indicated in it;

2. In the case of an accused person, a copy of the act instituting proceedings or preventive custody, together with the items of evidence on which the said decisions are based;

3. A precise account of the facts constituting the alleged offence, when the documents referred to in the foregoing paragraphs are not presented;

4. The text of the legal provisions applicable, together with those referring to the prescription of the penal action and of the penalty; and

5. Personal particulars to enable the person sought to be identified."

"Article 2503:

For the extradition application to be valid, the offence that gave rise to the trial or sentencing of the person sought, regardless of any modifying circumstances with respect to guilt, must have been punishable by loss of liberty at the time the offence was committed."

"Article 2504:

The Executive, through the Ministry of Foreign Affairs, may, on a basis of reciprocity, grant the extradition of persons prosecuted and sentenced by the authorities of another State if those persons are present in territory subject to the jurisdiction of the Republic of Panama.

For extradition to be lawful, the acts constituting the offence for which the person sought has been prosecuted, penalized or pursued must have occurred within the area under the jurisdiction of the requesting State and must be punishable by loss of liberty both in the legislation of the said State and in that of the Republic of Panama."

"Article 2505:

The application for extradition must be presented to the Ministry of Foreign Affairs through the respective diplomatic agent or, failing such, through a consular agent of the State concerned or of a friendly nation, accompanied by the documents referred to in paragraphs 2-5 of article 2502."

"Article 2506:

The application for extradition, or notice given through diplomatic channels of the intention formally to submit such an application in connection with a specified criminal act, shall give rise to the detention of the person sought for a maximum of 60 days. On the expiry of that term he shall be set at liberty and may not be again detained for the same act, except in a case where the application for extradition is submitted in accordance with the provisions of the previous article. The responsibility entailed by the provisional detention shall lie exclusively with the State that has requested the measure."

"Article 2507:

Upon receipt of the formal application for extradition, the Ministry of Foreign Affairs shall examine the documentation submitted. If it finds it insufficient, before refusing extradition for that reason it shall allow a reasonable period of time for the requesting State to make good the deficiencies pointed out. If the person sought has been detained at the demand of the requesting State, the latter shall be warned that the said person will be set at liberty after 60 days counting from the date of his detention, if by that time the request for extradition has not been duly completed."

"Article 2508:

Extradition shall not be granted in the following cases:

1. If the person sought is Panamanian by birth or had been naturalized Panamanian before the act on which the extradition demand is grounded was committed;

2. If the Panamanian courts are competent to try the person whose extradition is requested for the offence on which the request is grounded;

3. If in the opinion of the Ministry of Foreign Affairs the person sought may be tried in the requesting State for an offence other than the one that gave rise to the request for extradition or by an emergency or ad hoc court;

4. If it has previously been refused for the same offence, on the same grounds and with regard to the same person;

5. If the person sought has undergone the respective penalty, or has been pardoned or amnistied for the offence that gave rise to the extradition request, in the requesting State or in the Republic of Panama;

6. If the time limit for the penal action or the sentence passed on the person sought, in the legislation of the requesting State or in that of the Republic of Panama, has expired prior to the request for extradition;

7. In the case of persons who, in the opinion of the Ministry of Foreign Affairs, are wanted for political offences or whose extradition is requested for predominantly political reasons. The abduction, homicide or murder of a head of State or any person exercising public authority at the time the crime was committed shall not be considered a political offence;

8. If the offence is subject to the death penalty in the requesting State, unless that State gives a formal undertaking to apply to the person sought a less severe penalty;

9. When the person sought is standing trial or serving a sentence in the Republic of Panama, his handing over to the requesting State, if extradition is granted, shall be deferred until the criminal proceedings are terminated, in case of acquittal, or until the sentence has been served, according to the case;

10. If the person sought has been tried in the Republic of Panama for the same offence on which the request for extradition is grounded; and

11. If so determined by the Executive, with reasons given."

12. With regard to the provisions of article 7 of the Convention, article 2509 of the Judicial Code states as follows:

"Article 2509:

If extradition has been refused for any of the reasons indicated in paragraphs 1, 2, 3 and 4 of the foregoing article, the person sought shall be tried in the Republic of Panama as if the offence he is accused of had been committed on Panamanian territory."

13. With regard to article 8 of the Convention, article 2000 of the Judicial Code provides that "extradition shall be regulated by what is laid down on the subject by any public treaties to which the Republic is a party and, failing such, to the provisions of sections 1 and 2 below of this chapter."

14. Article 9 of the Convention is covered by the above-cited articles 2505 and following and in bilateral agreements established by the Republic of Panama with friendly countries for the purpose of affording each other mutual assistance, where possible, in regard to criminal proceedings concerning the offences covered by the present Convention.

15. With regard to article 10 of the Convention, the Republic of Panama has established a National Evaluation Committee, created in pursuance of Decree No. 134 of 20 March 1990, which regulates the prison system and provides that it must be based on principles of security, rehabilitation and social protection. At present the Directorate of Penal Affairs of the Ministry of the Interior and of Justice is conducting educational and training workshop-seminars on human rights for members of the custodial staff of the penitentiary centres. Courses and seminars have also been held for the inmates, in order to assist their reintegration into society and for their personal benefit. In July 1990 35 warders were sent to the penitentiary training school of the Reform Centre in San José, Costa Rica. Later the inspectors and supervisers of the custodial staff were sent there. In addition, since July Panamanian instructors and specialists have been giving a complete educational course on the prohibition of torture.

16. Regarding articles 13 and 14 of the Convention, articles 119, 120, 126, 129 and 130 of the Panamanian Penal Code provide as follows:

"Article 119:

Every offence entails civil liability on the part of those persons found guilty thereof, and therefore the victim of an act of torture has the right to redress and is entitled to equitable compensation."

"Article 120:

The sentence pronounced in a criminal verdict may order:

1. Compensation for the material and moral damage caused to the victim or his family or to a third party;

2. Restitution of the object obtained through the offence committed or, failing that, of the equivalent value."

"Article 126:

The State, autonomous, semi-autonomous or decentralized public bodies, and the municipalities shall be held subsidiarily liable for the amount of the damages and losses resulting from punishable acts committed by their staff in the discharge of their duties."

"Article 129:

The State shall also be liable for civil damages if the case is finally dismissed after the accused has been held in preventive custody for more than a year."

"Article 130:

The civil liability resulting from the offence does not cease with the completion of the sentence and is extinguished only by the means and in the way determined in the Civil Code. Reasons for extinguishment of the penal action and the penalty do not extend to civil liabilities resulting from the offence."

17. The principle embodied in article 15 of the Convention, which lays down that each State party shall ensure that no statement established to have been made as a result of torture may be invoked as evidence in any proceedings, is recognized in article 2120 of the Judicial Code, which reads:

"Article 2120:

The use of promises, duress or threats to induce the accused to make a statement is prohibited, as also is any deceitful or objective question. Any official who infringes this rule shall incur the appropriate disciplinary penalty, without prejudice to any criminal penalty to which he may be liable."

18. Finally, article 16 of the Convention lays down that each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 of the Convention. This constitutes one of the main guiding principles of the Government of the Republic of Panama, inasmuch as it is publicly committed to total respect for human rights in all their aspects.

Annexes */

1. Political Constitution of the Republic of Panama

2. Articles of the Penal Code

3. Articles of the Judicial Code

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*/ The Spanish texts of these documents, received from the Government of Panama, are available for consultation in the files of the United Nations Centre for Human Rights.